

Message Text

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC IMMEDIATE 6507

INFO AMCONSUL CALCUTTA IMMEDIATE

C O N F I D E N T I A L NEW DELHI 1161

E.O. 11652: GDS

TAGS: CASC, PFOR, IN

SUBJECT: HARCOS/FLETCHER CASE

REF: CALCUTTA 0151

1. DOLORES DONOVAN, THE AMERICAN LAWYER FOR HARCOS/FLETCHER, THE TWO AMERICANS INCARCERATED IN CALCUTTA AWAITING TRIAL FOR CONSPIRACY TO COMMIT ESPIONAGE, ASKED CONSUL O'NEILL JANUARY 23 WHETHER THE CONSULATE OR THE EMBASSY WOULD TRANSMIT HER LEGAL PAPERS BACK TO THE UNITED STATES VIA POUCH. HAVING READ THE SUMMONS SERVED ON HER INDIAN ASSOCIATE BHOSE (REFTEL), DONOVAN IS NOW QUITE CONCERNED THAT THE INDIAN AUTHORITIES MIGHT SEIZE HER PAPERS, AND EVEN ARREST HER AS SHE DEPARTS CALCUTTA FOR DELHI (SCHEDULED FOR JAN. 26) OR DELHI FOR NEW YORK (EXPECTED AT THE END OF NEXT WEEK).

2. DONOVAN'S PAPERS INCLUDE BOTH THOSE BEARING ON THE CASE WHICH SHE CARRIED TO INDIA IN MID-DECEMBER AND THOSE WHICH SHE HAS SINCE COLLECTED IN PREPARING THE DEFENSE WITH HARCOS AND FLETCHER AS WELL AS INDIAN LAWYERS BHOSE AND DUDHEWALA. IT IS CLEAR FROM THE COMPLAINT FILED ON BHOSE THAT THE PROSECUTION COULD CONSIDER DONOVAN'S POSSESSION AND RETENTION OF SOME OF THESE PAPERS AS CONSTITUTING VIOLATIONS OF THE OFFICIAL SECRETS ACT. THE POSSIBILITY THAT DONOVAN COULD BE ARRESTED AND PAPERS IN HER POSSESSION CONFISCATED HAS MOREOVER BEEN RAISED BY THE SWEEPING ALLEGATION IN THE PROSECUTION'S
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COMPLAINT ON BHOSE THAT "ALL THE PERSONS CONCERNED CONSPIRED

TOGETHER TO COLLECT THE SAID DOCUMENTS TO CONVEY SECRET INFORMATION TO A FOREIGN AGENT...WITHIN THE MEANING OF SECTION 3 OF THE OFFICIAL SECRETS ACT, 1923." MS. DONOVAN IS CITED BY NAME WITH BHOSE IN THE COMPLAINT AS ONE OF THESE "PERSONS."

3. WHEN DONOVAN FIRST RAISED THE QUESTION OF USE OF THE POUCH TO TRANSMIT LEGAL PAPERS, THE CONSULATE ADVISED HER THAT SUCH USE OF THE POUCH WOULD BE INAPPROPRIATE. BUT DONOVAN, CLEARLY CONCERNED BY THE PROSECUTION'S TREATMENT OF BHOSE, THEN SAID SHE WOULD HAVE UPI CORRESPONDENT (AND PERSONAL FRIEND) SYLVANA FOA CARRY OUT THE PAPERS. FOA IS APPARENTLY WILLING. THE EMBASSY RECOMMENDED JAN. 24 THAT THE CONSULATE CAUTION DONOVAN ON THE RISKS OF EITHER FOA OR DONOVAN CARRYING OUT THE PAPERS.

4. THERE ARE REASONABLE GROUNDS FOR CONCERN BOTH ABOUT THE SAFETY OF THESE PAPERS AND MS. DONOVAN'S PERSONAL WELFARE SHOULD SHE (OR FOA) ATTEMPT TO CARRY THEM OUT OF INDIA. THE BEST COURSE (WHICH WE PROPOSE TO RECOMMEND TO DONOVAN) IS THAT SHE LEAVE HER PAPERS BEHIND. ON THE OTHER HAND, IF SHE CONSIDERS THEM VITAL TO THE PREPARATION OF THE HARCOS/FLETCHER DEFENSE, SHE WILL PRESUMABLY INSIST ON MAKING ARRANGEMENTS FOR THEM TO BE SHIPPED OUT OF INDIA ONE WAY OR ANOTHER. SINCE THERE ARE POTENTIAL PUBLIC RELATIONS AND FOREIGN POLICY PROBLEMS IN THIS CASE, AND SINCE WE DO HAVE A RESPONSIBILITY TO ASSURE THE DEFENDANTS AN ADEQUATE DEFENSE, WE ARE REQUESTING THE DEPARTMENT'S ADVICE. PLEASE REPLY BY IMMEDIATE CABLE AS WE EXPECT DONOVAN TO RAISE THE ISSUE WITH THE EMBASSY WHEN SHE RETURNS TO NEW DELHI EARLY NEXT WEEK.
SCHNEIDER

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